

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

REFUGIO CARRILLO,

Plaintiff,

v.

HOPE L. SWANN, et al,

Defendants.

Case No. 1:20-cv-00783-NONE-BAM

ORDER GRANTING APPLICATION TO
PROCEED *IN FORMA PAUPERIS*

FINDINGS AND RECOMMENDATIONS TO
DISMISS ACTION AS DUPLICATIVE

(Doc. Nos. 1, 3)

FOURTEEN (14) DAY DEADLINE

Plaintiff Refugio Carrillo ("Plaintiff"), proceeding *pro se*, filed this civil action on June 5, 2020. (Doc. No. 1.) Concurrent with his complaint, filed an application to proceed without payment of fees. (Doc. No. 3.) Currently before the Court is Plaintiff's application, along with his complaint for screening.

I. Application to Proceed *In Forma Pauperis*

Plaintiff has requested leave to proceed *in forma pauperis* pursuant to Title 28 of the United States Code section 1915(a). Plaintiff has made the showing required by section 1915(a), and accordingly, the request to proceed *in forma pauperis* will be granted. 28 U.S.C. § 1915(a).

II. Screening Requirement and Standard

The Court screens complaints brought by persons proceeding *pro se* and *in forma pauperis*. 28 U.S.C. § 1915(e)(2). Plaintiff's complaint, or any portion thereof, is subject to

dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

To survive screening, Plaintiffs’ claims must be facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969.

III. Plaintiff’s Allegations

Plaintiff brings this action against the following defendants: (1) Department of Justice, Civil Division Torts Branch, James G. Toughey, Jr., Director of Tort Claims; (2) Hope L. Swann, Paralegal Specialist; (3) Marth Hirschfield, Attorney Advisor for the Office of the Inspector General; (4) Cecilia Besse, Acting Deputy General Counsel; and (5) Brent McIntosh, General Counsel for the United States Department of the Treasury. Plaintiff alleges violations of the right to due process, the Ninth Amendment, and the Fourteenth Amendment reportedly due to the denial of an administrative claim submitted under the Federal Tort Claims Act (“FTCA”). He seeks eleven trillion dollars for being kidnapped twice by the Department of Justice (“DOJ”) and for a trademark belonging to him. Plaintiff also seeks a stop and desist order for harassment and stalking by the DOJ.

Plaintiff submitted several attachments with his complaint. These attachments include:

(1) December 10, 2018 letter from Hope L. Swann Re: Submission of Refugio Carrillo, which denied Plaintiff's administrative claim because it lacked a sum certain rendering it invalid (Doc. No. 1 at 10.); (2) April 2, 2019 letter from Hope L. Swann Re: Administrative Tort Claim for Refugio Carrillo, which denied Plaintiff's administrative tort claim because it was unsigned rendering it invalid (*Id.* at 38); (3) December 18, 2019 Administrative Claim Recommendation: Absurd, which found Plaintiff's administrative tort claim "absurd and nonsensical" (*Id.* at 9); (4) January 6, 2020 letter from James Touhey, Jr. Re: Administrative Tort Claim of Refugio Carrillo, which notified Plaintiff that DOJ had reviewed and denied Plaintiff's administrative tort claim. (*Id.* at 8.) Plaintiff's complaint also references a Statement of Claim, which details events spanning the period from 1994 through January 2020 with additional exhibits. (*Id.* at pp. 11-37.)

IV. *Carrillo v. Department of Justice, et al.*, No. 1:20-cv-00762-AWI-SAB

On June 2, 2020, Plaintiff filed *Carrillo v. Department of Justice, et al.*, No. 1:20-cv-00762-AWI-SAB (hereinafter "*Carrillo I*").¹ The complaint in *Carrillo I* is virtually identical to the complaint filed in the instant action, including in parties, claims, factual allegations, length and attachments. (*See Carrillo I*, Doc. No. 1.) The only difference that the Court can identify is a handwritten notation on the first page of the complaint in the instant action stating, "In the United States District Court, Bakersfield federal Court House 510 19th St Bakersfield CA 93301." (Doc. 1 at 1.) This notation is not material.

In *Carrillo I*, the assigned magistrate judge issued findings and recommendations to dismiss the complaint for failure to state a claim on June 5, 2020. (*See Carrillo I*, Doc. No. 4.) The findings and recommendations were submitted to the assigned district judge and Plaintiff was advised that any objections were to be filed within thirty days following service of the recommendation. (*Id.*) Plaintiff filed objections on June 19, 2020. (*See Carrillo I*, Doc. No. 5.)

V. Discussion

Duplicative lawsuits filed by a plaintiff proceeding in forma pauperis are subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). *See, e.g., Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *McWilliams v. State of Colo.*, 121 F.3d 573, 574

¹ The Court takes judicial notice of the files in that case. Fed. R. Evid. 201.

(10th Cir. 1997); *Pittman v. Moore*, 980 F.2d 994, 994–95 (5th Cir. 1993); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). A complaint that merely repeats pending or previously litigated claims may be considered abusive and dismissed under § 1915. *Cato*, 70 F.3d at 1105 n.2; *Bailey*, 846 F.2d at 1021. “Dismissal of the duplicative lawsuit, more so than the issuance of a stay or the enjoinder of proceedings, promotes judicial economy and the comprehensive disposition of litigation.” *Adams v. Cal. Dep’t of Health Servs.*, 487 F.3d 684, 692–93 (9th Cir. 2007), *overruled on other grounds by Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).

“[I]n assessing whether the second action is duplicative of the first, we examine whether the causes of action and relief sought, as well as the parties or privies to the action, are the same.” *Adams*, 487 F.3d at 689 (citations omitted). “Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant.” *Id.* at 688 (internal quotations and citations omitted).

As discussed above, the complaint in *Carrillo I* is identical in all material respects to the complaint filed in the instant case. The documents are identical with the exception of a single handwritten notation identifying the Bakersfield Division of the Eastern District of California. In both cases, Plaintiff raises the same claims, arising out of the same events, involving the same parties, and infringing upon the same rights. Therefore, the Court finds that this case should be dismissed because it is duplicative of *Carrillo I*, his earlier filed, currently pending case.

VI. Conclusion and Recommendation

Based on the foregoing, the Court HEREBY RECOMMENDS that this action be dismissed as duplicative.

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendation, Plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*

1 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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3 IT IS SO ORDERED.

4 Dated: June 29, 2020

5 /s/ *Barbara A. McAuliffe*
UNITED STATES MAGISTRATE JUDGE